



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 09/909,587 Confirmation No.: 2209
Applicant(s): Richard O. Shuler
Filed: July 20, 2001
Art Unit: 3628
Examiner: Harbeck, Timothy M.
Title: SYSTEMS AND METHODS FOR INTERACTIVE BEEF
CATTLE MARKETPLACE

Docket No.: 043340/237124
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US Patent and Trademark Office
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REPLY BRIEF – 37 C.F.R. §41.41

1. Introduction

This Reply Brief is filed pursuant to 37 C.F.R. §41.41 to address various issues raised by the Examiner in the Examiner's Answer dated March 7, 2007. This Reply Brief has been filed within two months of the Examiner's Answer as required by 37 C.F.R. §41.41(a)(1). The Commissioner is hereby authorized to charge the Deposit Account No. 16-0605 for \$250 as required under 37 C.F.R. §41.20(b)(2).

2. *'Pre-Condition' (as used by Examiner) is not a 'Condition' (as used in Bi) is not a 'Pre-Conditioning Program' (as used by Applicant in the Claimed Invention)*

The Examiner has distorted the disclosure of *Bi* (US 6,311,178 B1) in relation to the claimed invention in a way that is not consonant with either. Specifically, as shown on Page 4 of the Office Action, the Examiner alleges that *Bi* uses information related to supply and demand profiles defining *pre conditions*. Actually, *Bi* nowhere uses the term 'pre condition'. Instead, *Bi* discloses use of search criteria with multiple conditions defined as product, market position (buyer or seller, or both), date of offer, date of delivery, offerer, price and volume. C4:L9-13; L51-55. The claimed invention actually recites "pre-conditioning program comprising any of

numerous protocols or criteria that govern the breeding, feeding, management, and health of cattle prior to slaughter” of a group of cattle. Thus, the Examiner has erred in the assertion that *Bi* discloses a ‘pre-condition’ which it nowhere mentions. The Examiner has also erred in the assertion that ‘pre conditions’ are ‘pre-conditioning programs comprising any of numerous protocols or criteria that govern the breeding, feeding, management, and health of cattle prior to slaughter” as recited in all of Claims 1-11. Thus, the Examiner has engaged in “piecemeal” examination and the rejection should be reversed for this reason.

3. Examiner admits that Bi does not explicitly disclose the step wherein the matching system is with respect to a cattle market wherein supply and demand profiles specify a pre-conditioning program comprising any of numerous protocols

On Page 4 of the Examiner’s Answer, the Examiner correctly recognizes that *Bi* fails to disclose a matching system with respect to a cattle market in which the demand or supply profiles specify a “pre-conditioning program comprising any of numerous protocols or criteria that govern the breeding, feeding, management, and health of cattle prior to slaughter” as recited in Claims 1-11. Thus, since neither *Ordish* or *Gransberry* (nor any other art relied upon by the Examiner) cover this glaring deficiency, the rejection of Claims 1-11 should be reversed for this reason.

4. Bi and Ordish are directed to trading with limited information representative of the general market trend to which the claimed invention is counter

In an attempt to cover the deficiency of *Bi* noted immediately above, the Examiner looks to *Ordish* (US 2001/0039527). However, *Ordish* fails is directed to a matching system for trading systems which can include commodities futures contracts. Page 2, Para. [0009]. The matching system of *Bi* defines offers by limited information including product, market position (buyer or seller, or both), date of offer, date of delivery, offerer, price and volume. *Ordish* merely mentions ‘predetermined matching criteria’ in the context of foreign exchange, stocks, bonds, commodities future contracts, etc. in which information regarding the traded instrument is very limited. In contrast, Claims 1-11 are directed to matching demand or supply profiles based on “a pre-conditioning program comprising any of numerous protocols or criteria that govern the

breeding, feeding, management, and health of cattle prior to slaughter.” Defining demand or supply profiles using such a ‘pre-conditioning program’ actually runs counter to *Bi* and *Ordish* which serve to limit the amount of information about a traded item in order to increase trading efficiency and speed in the marketplace. The invention of Claims 1-11 is actually counter to this trend and provides a beef cattle marketplace heretofore unknown. Thus, properly understood, *Bi* and *Ordish* “teach away” from the claimed invention. Accordingly, the rejection of Claims 1-11 should be reversed for this additional reason.

5. *Gransbery adds nothing to Bi and Ordish*

On Page 5, the Examiner’s Answer states:

“Gransbery discloses that breeders of cattle are becoming more aware of consumer demands for the product and have started to breed cattle with this demand in mind. Therefore it would have been obvious to anyone skilled in the ordinary art at the time of the invention to include the teachings of Gransbery to the disclosure of *Bi* in view of *Ordish* so that the producers can inform potential buyers of the cattle of the specific breeding practices in order to increase the appeal to the overall market. In producing the type of cattle that the market is demanding (and being sure to announce this fact), the breeders are more likely to achieve a higher return on their investment.”

This statement is largely the Examiner's own which does not track with the actual disclosure of *Gransbery*. *Gransbery* is an article reflecting opinions of various cattle producers regarding how to sell bulls in a bear cattle market. It suggests no technology implementation for matching supply and demand profiles, nor does it suggest that somehow its teachings could be combined with *Bi* or *Ordish*. To the contrary, *Bi* and *Ordish* are directed to matching systems that use very limited information to define offers in order to increase trading speed and efficiency, which would be counter to adding information such as protocols or criteria that govern the breeding, feeding, management and health of cattle prior to slaughter. There is no mention in *Gransbery* of any protocol or criteria whatsoever, let alone one that governs "the breeding, feeding, management, and health of cattle prior to slaughter" as recited in Claims 1-11. Even if the Examiner were correct that *Gransbery* discloses that breeders of cattle are becoming more aware of consumer demands for the product and have started to breed cattle with this demand in mind, the combination of *Bi* in view of *Ordish* and *Gransbery* still fails to disclose the claimed invention of matching demand or supply profiles based on "a pre-conditioning program comprising any of numerous protocols or criteria that govern the breeding, feeding, management, and health of cattle prior to slaughter." There is simply no mention of any such program in *Bi*, *Ordish* or *Gransbery*. Accordingly, Claims 1-11 are patentable over the prior art of record.

6. *Pratt* fails to disclose the "verifying" and subsequent steps of Claims 9-11

On Page 6 the Examiner admits that *Bi* does not disclose the step of verifying and subsequent steps of Claims 9-11. However, the Examiner alleges that *Pratt* or well-known art discloses this feature. It is eminently clear that *Pratt* does not disclose "verifying by a third party the pre-conditioning program of the identified group of cattle." Although the Examiner attempts to state that it was well-known to utilize the services of a third party in order to verify aspects of a product or service, this is not what is claimed in Claim 9. To the extent the Examiner is attempting to state that the "verifying" step as recited in Claim 9 was well-known, that allegation is not capable of instant and unquestionable demonstration as being true, as illustrated by the fact that the Examiner has not produced any prior art to prove it. Furthermore, the Examiner has produced no evidence, let alone substantial evidence, that the "verifying" step of Claim 9 was

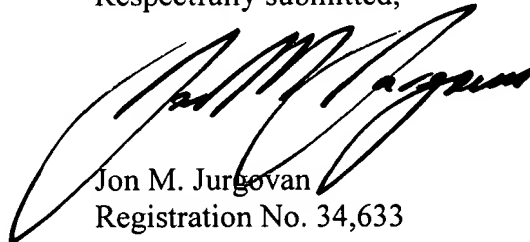
well-known. This is contrary to the most basic tenets of Due Process of law and is specifically proscribed by the APA. *In re Gartside*, 203 F.3d 1305, 1315, 53 USPQ2d 1769, 1775 (Fed.Cir.2000); MPEP §1216.01; *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed.Cir.2001). For all of these reasons, reversal of the rejection of Claims 9-11 is requested.

7. Summary

In conclusion, because the Examiner has not met the burden of establishing the *prima facie* case of obviousness under 35 U.S.C. § 103(a), Applicant respectfully requests reversal of the rejections of Claims 1-11 with instructions for a Notice of Allowance to be issued promptly for all pending Claims.

Please charge any fee deficiency and credit any overpayment in connection with the filing of this Reply Brief to our Deposit Account No. 16-0605.

Respectfully submitted,



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